

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO

SWINERTON BUILDERS, a California  
corporation; and SWINERTON  
INCORPORATED, a California corporation,

Plaintiffs,

v.

AMERICAN HOME ASSURANCE  
COMPANY; NATIONAL UNION FIRE  
INSURANCE COMPANY OF PITTSBURGH,  
PA.; and DOES 1 through 250, inclusive,

Defendants.

CASE NO.: 3:12-cv-06047-EMC

STIPULATION AND ORDER OF DISMISSAL

The undersigned parties, through their respective counsel, hereby stipulate the above-captioned action be dismissed with prejudice pursuant to FRCP 41(a)(1) as follows:

(1) On March 15, 2013, the Court (1) granted “Defendants’ motion to dismiss Plaintiffs’ breach of contract and breach of implied covenant claims to the degree that they are based on failure to settle the case on grounds of ripeness”; and (2) requested further briefing regarding “Plaintiff’s breach of contract claim based on the dispute about the proper calculation of deductibles.” (Document 31).

(2) On May 21, 2013, the Court (1) granted “Defendant’s motion to stay this action pending the completion of arbitration” relating to the breach of contract claim based on the dispute

about the proper calculation of deductibles; and (2) compelled the parties to proceed with arbitration of the deductible issue. (Document 36).

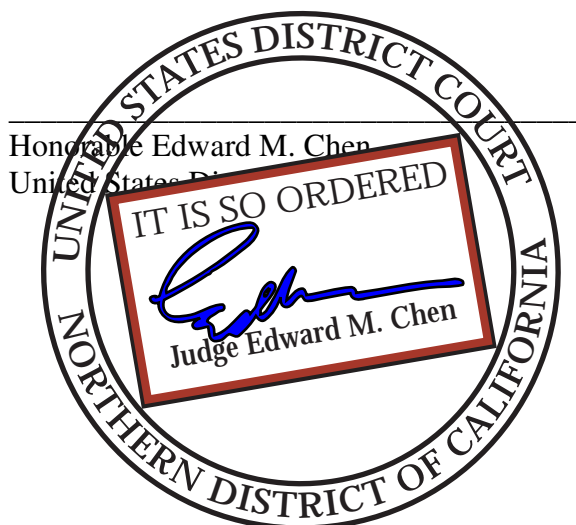
(3) The parties have since resolved the deductible issue subject to arbitration as ordered by the Court on May 21, 2013. As such, the parties stipulate the above-captioned action be dismissed with prejudice pursuant to FRCP 41(a)(1) with a waiver of fees and costs wherein each party will bear its own attorney's fees, costs, and expenses.

/s/ Charles L. Fanning  
 Joseph L. Oliva, Esquire  
 Charles L. Fanning, Esquire  
 Oliva & Associates, ALC  
 11770 Bernardo Plaza Court, Suite 350  
 San Diego, CA 92128  
 Attorney for Plaintiffs, Swinerton Builders  
 and Swinerton Incorporated

s/ Marc J. Derewetzky  
 Marc J. Derewetzky, Esquire  
 Trenk DiPasquale Della Fera & Sodono, P.C.  
 1300 Clay Street, Suite 600  
 Oakland, CA 94612  
 Attorneys for Defendants, American Home  
 Assurance Company and National Union Fire  
 Insurance Company of Pittsburgh, PA

\*\*\*\*\*

**PURSUANT TO STIPULATION, IT IS SO ORDERED:**



OLIVA & ASSOCIATES ALC  
Joseph L. Oliva, Esq., State Bar No. 113889  
Charles L. Fanning IV, Esq., State Bar No. 248704  
11770 Bernardo Plaza Court, Suite 350  
San Diego, California 92128  
Telephone: (858) 385-0491  
Facsimile: (858) 385-0499  
Email: joliva@olivalaw.com

Attorneys for Plaintiffs  
SWINERTON BUILDERS and  
SWINERTON INCORPORATED

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

SWINERTON BUILDERS, a California  
corporation; and SWINERTON  
INCORPORATED, a California corporation,

Plaintiffs,

v.

AMERICAN HOME ASSURANCE  
COMPANY NATIONAL UNION FIRE  
INSURANCE COMPANY OF PITTSBURGH,  
PA.; and DOES 1 through 250, inclusive,

Defendants.

CASE NO. CV 12-06047 EMC

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 11770 Bernardo Plaza Court, Suite 350, San Diego, California 92128.

On March 12, 2014, I caused the following document(s) described as:

**STIULATION OF DISMISSAL**

to be served on the interested parties in this action as follows:

Marc J. Derewetzky  
 mjd@trenklawfirm.com  
 Thomas Holden  
 tholden@trenklawfirm.com  
 TRENK, DIPASQUALE, DELLA,  
 FERA & SODONO, P.C.  
 1939 Harrison Street, Suite 711  
 Oakland, CA 94612  
 Telephone: 510-891-8687  
 Facsimile: 510-891-8627

**Counsel for Defendants**

AMERICAN HOME ASSURANCE  
 COMPANY and NATIONAL UNION FIRE  
 INSURANCE COMPANY OF  
 PITTSBURGH, PA.

☒ BY CM/ECF: I caused such document(s) to be served electronically pursuant to the United States Bankruptcy Court's Electronic Case Filing Program to be delivered electronically to those parties who have registered to become an E-Filer.

☐ US MAIL: I caused such document(s) to be deposited in the mail at San Diego, California. The document was mailed with postage thereon fully prepaid. I am readily familiar with this firm's practice of collection and processing or correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date of postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ BY OVERNIGHT MAIL: I enclosed the document(s) described above in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) at the address(es) listed above. I placed the envelope or package for collection and overnight delivery to an office or a regularly utilized drop box of the overnight delivery carrier.

☐ BY ELECTRONIC MAIL: I caused the above document(s) to be personally delivered to the above-listed person(s) at the Email addresses(es) set forth above.

☐ BY PERSONAL SERVICE: I caused the above document(s) to be personally delivered to the above-listed person(s) at the addresses(es) set forth above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 12, 2014 at San Diego, California.

  
 M. Gail Henson